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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200072 DATE: February 9, 1981
MATTER OF: James M. Smith, Inc.

DIGEST:

[Protest contending procuring activity improperly delayed award] causing protester's bid to expire is found to be without merit where record shows major portion of delay was attributable to awaiting protester's efforts to obtain SBA loan guarantee and considering protester's request concerning matter related to contract performance.

James M. Smith, Inc. (Smith), has protested any award under invitation for bids No. F25600-80-B-0047 issued by the United States Air Force for school bus service at Offutt Air Force Base, Nebraska.

Bids were opened on June 17, 1980, and Smith submitted the low bid. On June 19, 1980, the contracting officer requested a preaward survey on Smith with the results due by July 3, 1980. On June 27, 1980, the Defense Contract Administration Services (DCAS), the activity conducting the preaward survey, requested an extension of the due date until July 17, 1980, because Smith was unable to provide a financial statement. This extension was granted, as was a subsequent extension request from Smith on July 14, 1980, to extend the date until July 31, 1980, so that the Small Business Administration (SBA) could guarantee a loan to allow Smith to purchase the needed buses.

SBA approved the loan on July 18, 1980, and the preaward survey was completed on July 31, 1980, recommending award to Smith. DCAS called the Air Force on July 31 and advised of the results of the preaward survey, a copy of which was received at Offutt on August 4, 1980.

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On August 6, 1980, Smith requested permission to park the buses on the base during performance of the contract. Following discussions with the Staff Judge Advocate's office, this request was denied on August 13, 1980, because it would have altered the solicitation requirements under which bids were invited. Smith was advised of this denial on August 14, 1980, and also requested to extend its bid acceptance period which would otherwise expire on August 17, 1980.

On August 18, 1980, Smith provided the Air Force with a letter extending its bid until August 25, conditioned on the contract performance date being extended a similar period. This request resulted from the fact that Smith was attempting to obtain the necessary buses from a different supplier than Smith originally had intended to utilize because the first supplier would only hold the buses for Smith until August 11 without a deposit, which Smith was unwilling to provide.

The Air Force denied the request for a performance extension because the school year commenced on September 2 and transportation was needed on that date. Because of this denial, the Air Force determined that a public exigency existed and negotiations were begun with the three remaining bidders. The third and fourth low bidders did not submit an offer on the negotiated procurement because of their inability to obtain buses by the contract start date and award, therefore, was made to City School Bus Service (City) on August 25, 1980.

Smith's protest is based on the allegation that the Air Force deliberately delayed making the award until Smith was forced to let its bid expire. Smith contends that it had a commitment from a bus supplier until August 18 and that there was no reason for the 3-week delay from July 31, the date the preaward survey was completed, to August 18.

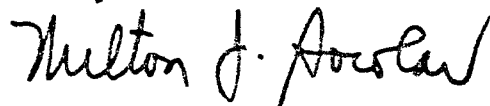
We believe that a review of the above facts reveals that the Air Force did not deliberately delay the award 3 weeks to prevent Smith from obtaining

the award. While Smith argues that an award action should have been initiated on July 31, we find the contracting officer could properly wait to review the entire report, which was not received until August 4, since a DCAS recommendation is merely advisory. In this connection, we note that the 1-month delay from July 3 to 31 to permit Smith to obtain the SBA loan guarantee indicates a willingness to work with Smith to enable it to qualify for the award rather than an attempt to "squeeze it out of a contract." The delay between August 6 and 14 was caused, at least in part, by the resolution of Smith's request to park the buses on the base.

While it is regrettable that Smith could not extend its bid because of its supplier difficulties and the short startup time remaining, we do not find the Air Force to have acted improperly in the circumstances. From our review of the record, most of the delay seems to be attributable to various administrative processing requirements and requests from Smith for certain actions. While Smith alleges that unnamed individuals advised it of the "squeeze play," no evidence to support this charge has been presented.

Finally, Smith contends that through the delay by the Air Force and the negotiation process, City was able to increase its price over that which it had originally bid. We note the contracting officer determined City's offer to be reasonable and also the contract was only for 1 year rather than the original 1 year plus 2-option years, which could in part account for the price increase. Also, it is reported that City had to substitute newer buses for the older ones originally bid because they had been committed to another contract.

The protest is denied.



For the Comptroller General
of the United States